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BEFORE THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

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Petition for Investigation of Declaratory) Docket No. 2002-253-C
Order before the Public Service Commission)
of South Carolina by)
BellSouth Telecommunications, Inc.
Regarding Nextel's Service Request

S. C. PUBLIC SERVICE COMMISSION
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UTILITIES DEPARTMENT

SPRINT COMMENTS AND OPPOSITION TO PETITION FOR
DECLARATORY ORDER

Sprint Corporation, on behalf of its wireless division, Sprint Spectrum L.P., d/b/a Sprint PCS ("Sprint"), pursuant to South Carolina Rule 103-838, by and through its undersigned attorneys, hereby files its Comments and Opposition to the Petition for Declaratory Order filed by BellSouth Telecommunications, Inc. ("BellSouth").

In its petition, BellSouth requests the Public Service Commission of South Carolina ("Commission") to determine whether Nextel's request for trunking with BellSouth when Nextel has assigned an NPA/NXX to a non-BellSouth exchange violates BellSouth's South Carolina General Subscriber Services Tariff ("Tariff") A 35.

BellSouth's Petition appears to simply ask for the interpretation of BellSouth's intrastate tariff, as demonstrated below, however, BellSouth's petition raises questions of Federal Law over which the Federal Communications Commission ("FCC") has exclusive jurisdiction. Also, the FCC is actively reviewing the rating and routing issues that are at the core of this matter. Accordingly, the Commission should dismiss BellSouth's Petition. In the alternative, the Commission should hold any proceedings it

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wishes to conduct in abeyance until the FCC has ruled on Sprint's Petition for Declaratory Ruling on the same issues.¹

I. INTRODUCTION AND BACKGROUND

Industry guidelines and long-standing industry practice permit carriers to designate different routing and rating points for the NXX codes they acquire.² BellSouth historically followed the settled industry practice, observed by all other telecommunications carriers in the country, by recognizing that NXX codes may have different routing and rating points.

On March 25, 2001, however, Sprint PCS acquired the 904-408 NXX code so it could begin providing its mobile services to residents of McClenny, Florida. Sprint PCS designated for this code the rating point of Northeast Florida Telephone Company's ("NFTC") McClenny exchange and the routing point of BellSouth's Jacksonville tandem switch. This time, however, BellSouth refused to load this Sprint PCS NXX code because the rating point involved a non-BellSouth exchange. BellSouth stated that it was concerned that the NXX code Sprint PCS acquired in full compliance with FCC rules "could violate" its state tariffs, specifically, GSST, Section A35.³

There are several problems with BellSouth's position. One, BellSouth has no authority to unilaterally modify federal numbering guidelines, either through a state tariff

¹ Sprint Petition for Declaratory Ruling, filed May 9, 2002, appended as Attachment 1. It should be noted that BellSouth filed a similar Petition at the Florida Public Service Commission ("FPSC") and subsequently withdrew its Petition for Declaratory Statement after Florida Staff recommended that the Petition be denied. See FPSC Docket No. 020415-TL. BellSouth thereafter filed a Petition for Generic Investigation. On October 15, 2002, the FPSC voted to hold proceedings in abeyance until the FCC rules on Sprint's Petition for Declaratory Ruling at the FCC. See FPSC Docket No. 020868-TL.

² See Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008, at § 6.2.2 (Jan. 7, 2002) ("Each switching center, each rate center and each POI may have unique V&H coordinates.") (Hereinafter, "CO Guidelines").

³ See BellSouth Petition for Declaratory Statement Regarding Sprint PCS' Service Request, FPSC Docket No. 020415-TL, at 1.

filing or internal business practice. Two, BellSouth issued this state tariff in 1997, but did not object to this standard industry practice until 2001.⁴ Three, BellSouth may not through a tariff or otherwise dictate how CMRS providers interconnect with other carriers.

Two consequences flowed from BellSouth's refusal to load the 904-408 code. First, Sprint PCS could not put the code in service and was effectively prohibited from entering this new market or selling phones in this new area, because the BellSouth tandem would not properly route the call to and from Sprint's network. Second, Sprint PCS was required to secure several waivers from the FPSC because FCC numbering optimization rules require carriers to begin using new codes within specified time frames.⁵

On January 30, 2002, BellSouth formalized its new policy by issuing a Carrier Notification to "all telecommunications carriers operating in BellSouth Telecommunications, Inc. service areas":

BellSouth will not support activation of NPA/NXX applications where the rate center is in a company other than BellSouth and the routing center is in BellSouth. This position is applied uniformly across all telecommunications carrier markets.⁶

⁴ It should be noted that BellSouth had loaded non-BellSouth rate-centered codes, in its access tandems, throughout BellSouth's nine-state region up to this time.

⁵ See 47 C.F.R. § 52.15(g).

⁶ BellSouth Interconnection Services, Carrier Notification SN9108244 (Jan. 30, 2002). See Exhibit B of Attachment 1 appended hereto.

Several weeks later, on March 8, 2002, BellSouth further advised Sprint PCS that it “will not support activation of NPA/NXX applications as described above and in our Carrier Notification”:

The current [Sprint PCS] configurations in **Beaufort, SC**, Mars Hill, NC, Stark FL and others should be corrected no later than June 8, 2002.⁷

Although BellSouth did not specifically identify the “corrective action” it expected Sprint PCS to take, it was nevertheless clear that effective June 8, 2002, BellSouth would stop routing to Sprint PCS over its Type 2A interconnection facilities calls that are rated in the identified non-BellSouth rate centers and would instead route the calls to the ILECs that have established the rate centers. In short, BellSouth proposed to disable, unilaterally, the ability of Sprint PCS customers to continue to receive calls made to their mobile handset.

Four days earlier, on March 4, 2002, Nextel and Triton PCS opposed BellSouth’s Section 271 petition involving Georgia and Louisiana because of BellSouth’s refusal to load certain of their NXX codes.⁸ Two weeks later, on March 20, 2002, BellSouth announced that it was revising its position.⁹ BellSouth stated that under its revised policy, it “will process the code memorandum request, while at the same time raising the issue with the appropriate state commission for determination.”¹⁰

⁷ Email from Carl Brackett, BellSouth, to Bill Pruitt, Sprint PCS (March 8, 2002), See Exhibit C of Attachment 1 appended hereto.

⁸ See Nextel Opposition, Docket No. 02-35 (March 4, 2002); Triton PCS Opposition, Docket No. 02-35 (March 4, 2002).

⁹ See BellSouth Interconnection Services, Revised Carrier Notification SN91082947 (March 20, 2002), See Exhibit D of Attachment 1 appended hereto.

¹⁰ BellSouth Interconnection Services, Revised Carrier Notification SN9108244 (March 20, 2002), See Exhibit E of Attachment 1 appended hereto.

Sprint PCS had repeated discussions with BellSouth over its refusal to load the 904-408 code, but to no avail. Therefore, on May 9, 2002, Sprint filed the attached Petition for Declaratory Ruling with the Federal Communications Commission (“FCC”), seeking confirmation of current rules and regulations pertaining to an incumbent Local Exchange Carrier’s obligation to honor the routing and rating points CMRS carriers designate for their NXX codes. Specifically, Sprint asked the FCC to confirm that:

- (a) an incumbent local exchange carrier (“ILEC”) may not refuse to load in its network telephone numbering resources that an interconnecting carrier acquires in compliance with the Commission’s numbering rules and,
- (b) an ILEC may not refuse to honor the routing and rating points that an interconnecting carrier designates for its numbering resources.”¹¹

The FCC issued a Public Notice seeking Comments on Sprint’s Petition and has received over forty (40) sets of Comments to date.¹²

On May 15, 2002, over a year after Sprint PCS specifically asked BellSouth to load its 904-408 code, BellSouth loaded the code in its network. In its May 22, 2002 opposition to Sprint’s FCC declaratory ruling petition, BellSouth announced that it “will not unilaterally stop routing Sprint PCS calls on June 8, 2002 or on any other date.”¹³

While presented as a state tariff issue, federal interconnection and numbering issues are at the core of BellSouth’s petition and are properly before the FCC at this time. Even if this Commission decided that BellSouth violated its tariff by loading Nextel or

¹¹ See Attachment 1, appended hereto.

¹² See *Public Notice*, Comment Sought on Sprint Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs, CC Docket No. 01-92, DA 02-1740 (July 18, 2002), 67 Fed. Reg. 51581 (August 8, 2002).

¹³ BellSouth Opposition at 2 ¶ 2, filed May 22, 2002.

Sprint's codes, Sprint questions whether the Commission could grant BellSouth any relief given the FCC's jurisdiction over numbering and CMRS-LEC interconnection.¹⁴ Accordingly, and as explained more fully below, Sprint respectfully requests the Commission to dismiss BellSouth's petition.

If the Commission determines that it wishes to investigate further, however, Sprint urges the Commission to hold any proceedings it may wish to conduct in abeyance until the FCC addresses Sprint's Petition for Declaratory Ruling. As the Florida PSC staff recognized in their recommendation on BellSouth's Petition for Declaratory Statement, the FCC's notice seeking comment "shows that the facts and the issues that Sprint has raised in the FCC docket are the same as the facts and the issues that underlie BellSouth's petition before this Commission."¹⁵ In addition, "the federal law implications of Sprint's request to activate its NXX codes with different rating and routing points is currently before the FCC. When the FCC resolves those issues before it, the status and effect of BellSouth's tariff will be more apparent."¹⁶ Finally, as demonstrated by the numerous comments filed in CC Docket No. 01-92, it is critical that the industry receives clarification from the FCC, the agency vested with the authority to establish a "Federal regulatory framework" for all CMRS national policy.¹⁷

¹⁴ Sprint does not dispute the jurisdiction state commissions have with respect to interconnection agreements. Sprint questions a state commission's authority to change federal law that governs interconnection agreements.

¹⁵ See Memorandum from the Office of General Counsel to the Director, Division of the Commission Clerk, Docket No. 020415-TL, page 5 (July 26, 2002).

¹⁶ *Id* at 9.

¹⁷ See discussion at p. 10 *infra*.

ARGUMENT

I. The Commission Lacks Subject Matter Jurisdiction to Decide the Questions of Federal Law that are at the core of BellSouth's Petition.

BellSouth states in its Petition that Nextel's request appears to be inconsistent with BellSouth's "virtual designated exchange" tariff. ("VDE tariff")

At the outset, it bears emphasis that CMRS providers in general and Sprint PCS in particular do not use "virtual" NXX codes. The FCC has defined "virtual" codes as those that "correspond with a particular geographic area that are assigned to a customer located in a different geographic area."¹⁸ Sprint obtains NXX codes only in areas where it has facilities (*e.g.*, cell sites) and provides services to customers. There is nothing "virtual" about Sprint's provision of services in areas where it obtains NXX codes. Thus, it would appear that BellSouth's VDE tariff does not apply here.

Even if the tariff does apply, however, the tariff would be invalid as being inconsistent with federal law. In this regard, the FCC has held that an incumbent LEC may not avoid its obligations under federal law simply by filing incompatible state tariffs.¹⁹ Any potential conflict with BellSouth's VDE tariff can be resolved easily, simply by amending the tariff. Sprint-Florida amended its virtual rate center tariff containing language similar to BellSouth's current VDE tariff to eliminate restrictions relating to routing and rating points in different exchange areas involving a different ILEC.²⁰

¹⁸ Developing a Unified Intercarrier Compensation Regime, Docket No. 01-92, FCC 01-132, 16 FCC Rcd 9619, 962 par. 115 (2001).

¹⁹ See, *e.g.*, *Metrocall v. Concord Telephone*, DA-02-301 (Feb. 8, 2002); *TSR Wireless v. US West*, 15 FCC Rcd 1166 (2000), *aff'd* *Qwest v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

²⁰ See amendment to Sprint-Florida, Incorporated's General Exchange Tariff, Section A 25, Second Revised Sheet 3.1, effective February 21, 2002. The Florida Commission allowed this tariff to take effect

A. BellSouth Does Not Have the Authority under Federal Law to Determine How CMRS Carriers Interconnect with Other Carriers

Congress has recognized that carriers may interconnect with each other either directly or indirectly.²¹ In this regard, the FCC has explicitly ruled that CMRS carriers have no obligation to interconnect directly with other carriers.²² The FCC has further held that it is the interconnecting carriers, not the ILEC, that can choose the type of interconnection “based upon their most efficient technical and economic choices,”²³ expressly ruling that “a LEC is obligated to provide a CMRS provider with the interconnection of its choice upon its request.”²⁴

[A CMRS] carrier is entitled to choose the most efficient form of interconnection for its network, and the BOCs may not dictate an RCCs’ [Radio Common Carriers’] type of interconnection.²⁵

Indeed, FCC rules explicitly command that a “local exchange carrier *must* provide the type of interconnection reasonably requested by a mobile carrier.”²⁶

Sprint PCS, like most CMRS carriers, generally interconnects with the Public Switched Telephone Network (“PSTN”) using Type 2A interconnection. With Type 2A interconnection, the mobile switching center (“MSC”) is interconnected directly to the LATA tandem switch. Type 2A interconnection enables CMRS carriers to send and receive traffic from all switches that subtend the LATA tandem switch, whether the

without challenge. Consistent with Sprint policy, Sprint’s South Carolina tariff does not contain this limitation either.

²¹ See 47 U.S.C. § 251(a)(1) (“Each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”).

²² See *First Local Competition Order*, 11 FCC Rcd 15499, 15991 ¶ 997 (1996).

²³ *Id.*

²⁴ *Bowles v. United Telephone*, 12 FCC Rcd 9840, 9849 ¶ 15 (1997).

²⁵ *Third Radio Common Carrier Order*, 4 FCC Rcd at 2369 2376 ¶ 47 (1989).

²⁶ 47 C.F.R. § 20.11(a)(emphasis added).

subtending switch is owned by the LATA tandem switch owner (*e.g.*, BellSouth), another incumbent local exchange carrier (*e.g.*, ALLTEL, NFTC), a competitive (or alternative) local exchange carrier (“CLEC” or “ALEC”), or another CMRS carrier. With Type 2A interconnection, a CMRS carrier interconnects directly with the RBOC and indirectly with all other carriers that are also interconnected with the LATA tandem switch.

It is noteworthy that BellSouth has not challenged this arrangement in the past. In fact, BellSouth testified before the FPSC:

Importantly, BellSouth does not object to Sprint designating a single POI at a point in a LATA on one of BellSouth’s “networks,” for traffic that Sprint’s end users originate. Further, BellSouth does not object to Sprint using the interconnecting facilities between BellSouth’s “networks” to have local calls delivered or collected throughout the LATA.²⁷

Yet, BellSouth’s refusal to load Sprint PCS’s NXX codes rated in non-BellSouth exchanges would effectively require Sprint PCS and the non-BellSouth ILEC to interconnect directly, so the carriers can exchange traffic with each other. BellSouth does not possess the authority to dictate such direct connections.

It is questionable, however, whether this Commission can address this issue of federal law. The FCC has preempted states over LEC-CMRS interconnection, holding that it possesses “plenary jurisdiction . . . over the physical plant used in the interconnection of cellular carriers”:

Cellular physical plant is inseparable and thus Section 2(b) does not limit our jurisdiction in this area. Like telephone terminal equipment, the interconnected trunk lines and equipment of a cellular system are used to make both interstate and intrastate calls. Moreover, it would not be

²⁷ *BellSouth/Sprint Arbitration Order*, Docket No. 000828-TP, Order No. PSC-01-1095-FOF-TP, at 34 (May 8, 2001), quoting BellSouth witness Ruscilli.

feasible to require one set of trunk lines and equipment for intrastate calls and another for interstate calls.²⁸

The FCC further noted that “any state regulation in this area would substantially affect the development of interstate communications; without a nationwide policy governing the reasonable interconnection of cellular systems, many of those systems may be barred from the interstate public telephone network. A nationwide policy will also help prevent increased costs and diminished signal quality among cellular systems.”²⁹

After the FCC preempted states over CMRS routing issues, Congress “significantly changed the regulatory framework for CMRS” in the 1993 Budget Act.³⁰ Among other things, it expanded FCC authority over LEC-CMRS interconnection and limited state commission authority over CMRS.³¹ Congress determined that it was necessary “to establish a *Federal regulatory framework* to govern the offering of *all* commercial mobile services.”³² This “Federal regulatory framework” was necessary not only because of the impracticality of applying state regulation to services that operate “without regard to state lines,” but also to “foster the growth and development of mobile services”:

The Committee considers the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network.³³

²⁸ *Second Radio Common Carrier Order*, 2 FCC Rcd 2910, 2912 ¶ 17 (1987). See also *Second CMRS Order*, 9 FCC Rcd 1411, 1498 ¶ 230 (1994).

²⁹ *Id.*

³⁰ *Developing a Unified Intercarrier Compensation Regime*, Docket No 01-92, 16 FCC Rcd 9616, 9640 ¶ 84 (2001).

³¹ See *id.*

³² H.R. Conf. Rep. No. 103-213, 103d Cong., 1st Sess. 490 (1993)(emphasis added).

³³ H.R. Rep. No. 103-111, 103d Cong., 1st Sess. 260-61 (1993).

As demonstrated above, BellSouth's position contravenes federal law. Moreover, BellSouth may not avoid its federal obligations by filing an inconsistent state tariff. Rather, BellSouth must raise the issue with the FCC, if it believes that federal law should be changed.³⁴

B. BellSouth's Interconnection Policy Contravenes the FCC's Numbering Rules

Congress gave the FCC "exclusive jurisdiction" over the North American Numbering Plan ("NANP"), but further authorized the FCC to delegate "any or all of such jurisdiction."³⁵ The FCC has delegated to NeuStar the authority to administer and implement the NANP.³⁶ The FCC has adopted rules governing the circumstances under which carriers may obtain numbering resources,³⁷ and it directed NeuStar to comply with "published industry numbering resource administration guidelines and Commission order and regulations."³⁸ Implicit within this structure is that all carriers will load in their networks numbering resources that NeuStar awards after determining that the applicant has met all FCC requirements. In this regard, courts have confirmed that the FCC's exclusive jurisdiction over numbering administration includes the authority to implement a uniform numbering system.³⁹

³⁴ In addition, as Sprint explains in its FCC petition, BellSouth may reduce its Type 2A interconnection capabilities only after securing from the FCC a certificate pursuant to Section 214 of the Communications Act.

³⁵ 47 U.S.C. § 251(3)(1).

³⁶ See *Request of Lockheed Martin and Warburg, Pincus for Review of the Transfer of the Lockheed Martin Communications Industry Services Business*, 14 FCC Rcd 19792 (1999).

³⁷ 47 U.S.C. § 52.15(g).

³⁸ See *id.* at § 52.15(d).

³⁹ See *New York v. FCC*, 267 F.3d 91, 103-04 (2d Cir. 2001)(FCC authority extends to local dialing patterns).

CONCLUSION

BellSouth does not like the long-standing industry convention, authorized by industry standards, whereby CMRS carriers may designate different rating and routing points. Last year, it asked the FCC to change the current practice and to prohibit CMRS carriers from establishing different rating and routing points.⁴⁰ Rather than wait for the FCC to enter its decision, however, and if only to learn whether the FCC would agree with BellSouth and adopt the changes that BellSouth was advocating, BellSouth refused to load the NXX codes obtained by Sprint PCS and other CMRS carriers.

In March 2002, other CMRS carriers objected to BellSouth's new policy in connection with its Section 271 application involving Georgia and Louisiana. Two weeks later, BellSouth revised its policy, stating that it would resume loading the NXX codes that CMRS carriers obtain pursuant to the FCC's numbering rules, but that it will "rais[e] the issue with the appropriate state commission."⁴¹ BellSouth has since raised the issue at the FPSC and now before this Commission. Raising the issue at each State Commission will force carriers to re-litigate the identical issue in nine different states. Given the comments of other carriers in CC-Docket No. 01-92, it is apparent that the issue is not limited to the BellSouth region and has the potential of being litigated in other states as well. Such costly state-by-state procedures are unnecessary given that the FCC is reviewing the issue at this time.

Based on the foregoing, Sprint requests the Commission to dismiss BellSouth's Petition for Declaratory Order. BellSouth's Petition involves questions of federal law over which the FCC has exclusive jurisdiction and the FCC is actively reviewing at this

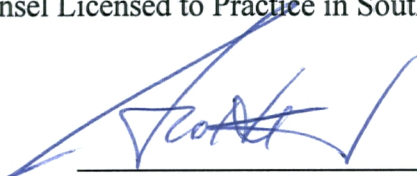
⁴⁰ See BellSouth Reply Comments, Docket No. 01-92, at 15-17 (Nov. 5, 2001).

⁴¹ See Exhibit E of Attachment 1, appended hereto.

time. Should the Commission wish to investigate, however, Sprint urges the Commission to hold its proceedings in abeyance until the FCC has issued its decision on Sprint's Petition for Declaratory Ruling on the same issues.

Respectfully submitted this 22nd day of October 2002.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Sprint Comments and Opposition to Petition for Declaratory Order by depositing a copy thereof properly addressed in the United States Mail, first-class postage prepaid and by facsimile and electronic mail addressed to the following:

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STAMP & RETURN

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Sprint Petition for Declaratory Ruling)
)
Obligation of Incumbent LECs to Load)
Numbering Resources Lawfully Acquired)
and to Honor Routing and Rating Points)
Designated by Interconnecting Carriers)
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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

SPRINT PETITION FOR DECLARATORY RULING

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May 9, 2002

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SPRINT PETITION FOR DECLARATORY RULING

Sprint Corporation, on behalf of its wireless division ("Sprint"), petitions the Commission to enter a declaratory ruling to confirm that an incumbent local exchange carrier ("ILEC") may not refuse to load in its network telephone numbering resources that an interconnecting carrier acquires in compliance with the Commission's numbering rules and may not refuse to honor the routing and rating points that an interconnecting carrier designates for its numbering resources.¹

I. INTRODUCTION AND SUMMARY

Our Public Switched Telephone Network ("PSTN"), a network of hundreds of different interconnected networks, works because all interconnecting carriers follow the same rules, or conventions, in the rating and routing of traffic. Perhaps the most important convention is that

¹ The FCC is empowered to issue a declaratory ruling to "terminate a controversy." 5 U.S.C. § 554(e). See also 47 C.F.R. § 1.2. There certainly exists a controversy with BellSouth that the FCC can resolve with a declaratory ruling. Sprint acknowledges that it could file a complaint against BellSouth concerning the matters raised in this petition. But given the importance of the issue to the PSTN and because BellSouth has taken the same position with other carriers, it would appear most judicious for the FCC to address the issue in a non-restricted proceeding, so all affected carriers have a meaningful opportunity to comment and participate.

carriers timely load in their networks numbering resources obtained by other carriers using the rating and routing points that the holder of the numbering resources has designated. There would be chaos if even a handful of carriers chose not to load another carrier's telephone numbers or to honor the designated rating and routing points associated with those numbers.

BellSouth Telecommunications, Inc. ("BellSouth") has departed from the industry convention (and its own past practice) by not honoring the routing and rating points designated by other carriers. Specifically, BellSouth has refused to load NPA-NXX codes that Sprint PCS ("Sprint") has lawfully acquired because the routing and rating points for the codes were not the same – a refusal that has had the effect of delaying Sprint's entry into new markets. According to BellSouth Sprint should be required to interconnect directly with other, third party carriers – even though Sprint cannot cost justify direct interconnection with the third-party carrier networks. Importantly, this issue is not limited to Sprint. Other wireless operators, such as Nextel and Triton PCS, are also threatened by this new BellSouth policy.

In addition to the above, BellSouth notified Sprint that it should "correct" existing interconnection arrangements with non-BellSouth ILECs located in North Carolina, South Carolina and Florida by June 8, 2002. The implication of this BellSouth-imposed deadline is that if Sprint does not make these changes by June 8, 2002, BellSouth will stop routing calls to Sprint where the rating and routing points do not match and where the rating point is associated with a rate center established by an ILEC other than BellSouth. If BellSouth stops routing these calls, Sprint customers with these telephone numbers will no longer receive any calls – unless Sprint installs before June 8, 2002 a direct connection to each of these small ILECs.

The PSTN could be jeopardized if each carrier – and an ILEC in particular – is allowed to determine unilaterally whether it will load another carrier's numbering resources and if so, how

it will route and rate calls to other carriers. BellSouth's departure from industry convention is based upon a tariff filed in 1995, but not raised as an issue until 2001. It is unclear how activity that BellSouth deemed permissible for six years (1995-2001) suddenly became unlawful. The actual dispute appears to be based upon the limitations of BellSouth's billing systems, not any regulatory prohibition.

BellSouth's position, if adopted, would 1) increase costs for all telecommunications carriers, including BellSouth, and would increase dramatically the probability that calls successfully completed today will not be completed in the future; 2) would inhibit the ability of CMRS carriers to provide their services in rural areas; and 3) would preclude BellSouth's own customers from calling certain Sprint customers – even though BellSouth customers can successfully reach these Sprint customers today.

The matters raised in this petition deserve the Commission's immediate attention.

II. BACKGROUND FACTS

A. CALL RATING AND ROUTING IN THE PUBLIC SWITCHED TELEPHONE NETWORK GENERALLY

The Commission has established rules governing the circumstances when a carrier may obtain numbering resources – whether an NXX code for non-pooling carriers or a thousands-block for pooling carriers.² Commission rules specifically permit carriers to obtain telephone numbers associated with a particular “rate center.”³ ILECs have established rate centers in order to determine whether their customer's calls should be rated as local or toll.⁴ Generally, an ILEC

² See 47 C.F.R. § 52.15(g).

³ See *id.* at § 52.15(g)(3).

⁴ See *Second NRO Order*, 16 FCC Rcd 306, 366 ¶ 144 (2000) (“The rate center system was established in the 1940s primarily to facilitate the routing and billing of telephone calls. Carriers typically need numbering resources in multiple rate centers to establish a footprint in a particular geographic area.”).

rates a landline call originating and terminating in the same rate center as local, while a call between rate centers is treated as a toll call.⁵ Competitive carriers need access to telephone numbers in ILEC rate centers so they can offer a local calling area comparable to that provided by ILECs to their own customers.

The application form that NANPA has developed requires applicants for an NXX code or a thousands block to designate the rate center to which the new code/block will be associated.⁶ The application form also requires the applicant to designate relevant routing information so other carriers will know how to route calls destined to customers with telephone numbers containing the new NXX code or thousands block. This routing information includes the identity of the applicant's serving switch and the LATA tandem switch serving the applicant's end office switch or mobile switching center ("MSC").⁷ The LATA tandem switch information is important because few carriers interconnect directly with each other. If there is no direct connection with the destination carrier, the originating carrier will route a call *via* the designated LATA tandem switch, which is generally operated by a Regional Bell Operating Company ("RBOC"). The tandem switch then forwards the call to the subtending switch operated by the destination carrier so the call can be forwarded to the person being called.

As BellSouth has noted, once a carrier obtains an NXX code, it "must tell the world how to route and rate calls to its newly assigned NXX code":

[O]nce the industry is made aware that a carrier has a new NXX code, each carrier must take whatever steps may be necessary within individual networks to recog-

⁵ An ILEC's practice of using rate centers to rate its calls as local or toll for purposes of billing its own customers should not be confused with the rules governing intercarrier reciprocal compensation. *See* 47 C.F.R. § 51.701(b)(2)(MTA boundaries used to determine the applicability of reciprocal compensation to LEC-CMRS traffic).

⁶ *See* Central Office Code (NXX) Assignment Request – Part 1, § 1.2 (revised Sept. 24, 2001).

⁷ *See id.*

nize and accurately route the new NXX code. . . . [I]ndustry has responsibility for recognizing and routing (or “opening” or “activating”) the new code through the public switched telephone network (PSTN).⁸

Industry guidelines recognize that the rating and routing points may not be the same (*e.g.*, a call may be routed to a switch physically located in one rate center but rated in another rate center).⁹ For example, a provider of commercial mobile radio services (“CMRS”) often has a single MSC that supports service in a large geographic area (which may encompass several dozen ILEC rate centers – and even several states). A CMRS carrier will generally interconnect its MSC directly with the RBOC tandem switch (known as Type 2A interconnection), and most incoming traffic destined to the CMRS carrier is routed through this tandem switch. Although the routing point for most land-to-mobile calls is the RBOC tandem, CMRS carriers often have multiple NXX codes rated in different rate centers to support local calling similar to that available with landline calls.¹⁰

B. BELL SOUTH’S REFUSAL TO LOAD CERTAIN SPRINT NXX CODES IN ITS TANDEM SWITCHES

Sprint continues to expand the coverage of its PCS network. As it enters a new area, it often obtains an NXX code rated in the predominate ILEC rate center in the area (so landline customers do not incur toll charges in calling Sprint customers). BellSouth historically followed

⁸ BellSouth Response to Request for Information, Docket No. 96-98, at 2-3 (Aug. 19, 1997). Industry notification is accomplished through Telcordia’s Business Integrated Routing and Rating Database System (“BIRRDs”), which contains data identifying information concerning “the routing and rating of calls.” CO Guidelines at § 6.2.1 and § 14.

⁹ See Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008, at § 6.2.2 (Jan. 7, 2002) (“Each switching center, each rate center and each POI may have unique V&H coordinates.”)(hereinafter, “CO Guidelines”).

¹⁰ As the Commission has noted, “to enable the rating of incoming wireline calls as local, wireless carriers typically associate NXXs with wireline rate centers that cover either the business or residence of end-users.” *NRO NPRM*, 14 FCC Rcd 10322, 10371 n.174 (1999). See also *First NRO Order*, 15 FCC Rcd

the industry convention by loading in its tandem switches the NXX codes that Sprint had obtained, including when the rating and routing points for a code were not the same.

Beginning in the spring of 2001, however, BellSouth suddenly stopped loading in its tandem switches new Sprint codes where the rating and routing points were different and where the code was rated in an “independent” ILEC rate center.¹¹ (BellSouth continued to load Sprint codes with different rating and routing points so long as the rating point was associated with a BellSouth rate center.) Extended discussion between the parties proved fruitless, even though BellSouth readily acknowledged that Sprint “ha[s] the right to define the rating and routing centers for that NPA/NXX.”¹² According to BellSouth, its past practice (and the industry convention) caused it and the independent ILEC “to violate regulations under which they operate,” although BellSouth did not identify these “regulations.”¹³

BellSouth formalized its new policy on January 30, 2002, when it issued a Carrier Notification to “all telecommunications carriers operating in BellSouth Telecommunications, Inc. service areas”:

BellSouth will not support activation of NPA/NXX applications where the rate center is in a company other than BellSouth and the routing center is in BellSouth. This position is applied uniformly across all telecommunications carrier markets.¹⁴

7574, 7577 n.2 (2000)(“A carrier must obtain a central office code for each rate center in which it provides service in a given area code.”).

¹¹ See, e.g., Letter from Bill Pruitt, Sprint, to Randy Ham, BellSouth (June 8, 2001), *appended as Exhibit A*.

¹² See Letter from Randy Ham, BellSouth, to Bill Pruitt, Sprint, at 1 (July 11, 2001), *appended as Exhibit B*.

¹³ See *id.*

¹⁴ BellSouth Interconnection Services, Carrier Notification SN91082844 (Jan. 30, 2002), *appended as Exhibit C*.

Several weeks later, on March 4, 2002, Nextel and Triton PCS opposed BellSouth's Section 271 petition involving Georgia and Louisiana because of BellSouth's refusal to load certain of their NXX codes.¹⁵ Two weeks later, on March 20, 2002, BellSouth announced that it was "revising" its position.¹⁶ BellSouth stated that under its "revised" policy, it "will process the code memorandum request, while at the same time raising the issue with the appropriate state commission for determination."¹⁷ As discussed below, the Commission has preempted states in this area, at least for traffic involving CMRS carriers, so BellSouth's proposed remedy -- re-litigate the identical issue in nine different states -- is not an option.

It is important for the Commission to understand the consequences of BellSouth's position, and the "right," or "power," BellSouth claims to possess. Most rural carriers do not exchange sufficient traffic volumes with Sprint to justify a direct connection to Sprint's MSCs. If a third-party carrier has a call destined to Sprint, it will ordinarily route the call to the LATA tandem switch, which will forward the call to Sprint over the Type 2A facilities connecting the tandem and the MSC.

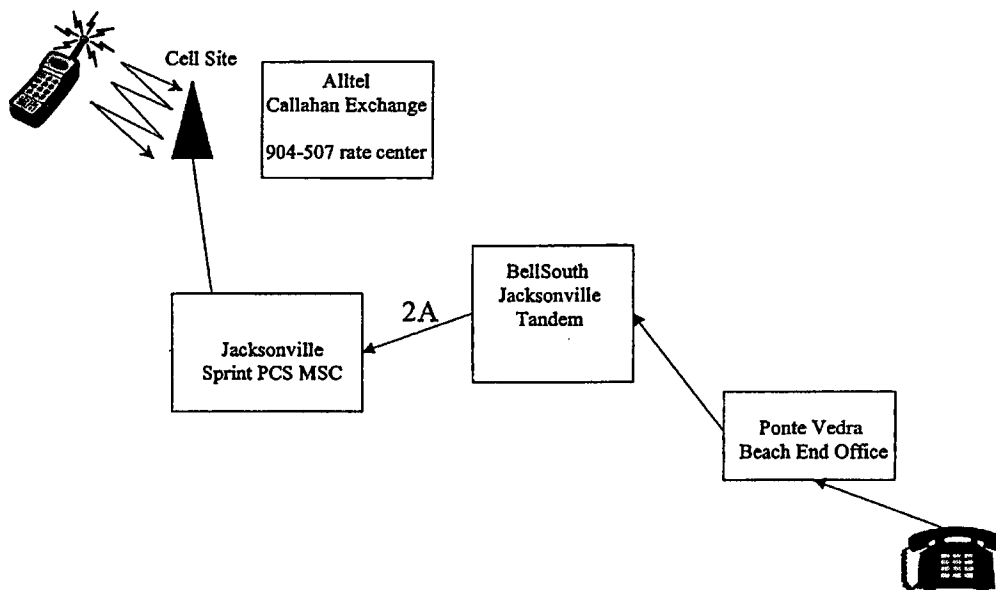
BellSouth now takes the position that it will no longer deliver to Sprint certain calls destined to Sprint but will instead route these calls to another ILEC that has *no involvement in the call*. BellSouth's new position is perhaps best understood with a specific example. Sprint provides its PCS services in ALLTEL's Callahan exchange, which is northwest of Jacksonville, Florida. Sprint has obtained the 904-507 code so it can provide its services to residents of the

¹⁵ See Nextel Opposition, Docket No. 02-35 (March 4, 2002); Triton PCS Opposition, Docket No. 02-35 (March 4, 2002).

¹⁶ See BellSouth Interconnection Services, Revised Carrier Notification SN91082947 (March 20, 2002), appended as Exhibit D

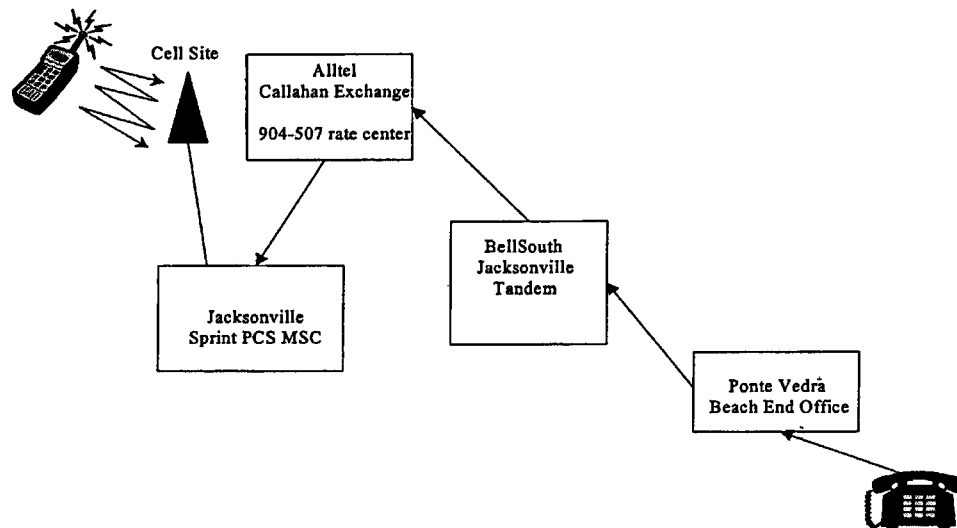
¹⁷ BellSouth Interconnection Services, Revised Carrier Notification SN91082844 (March 20, 2002), appended as Exhibit E.

Callahan exchange – that is, this 507 code is rated in the Callahan exchange. Assume a BellSouth customer in Ponte Vedra Beach, Florida, also located in the 904 NPA, calls a Sprint customer with a number rated in the Callahan exchange. BellSouth today transports the call from its Ponte Vedra Beach end office to its tandem switch in Jacksonville, where it switches the call to the Type 2A trunk group to Sprint MSC in Jacksonville. The call routing used today is reflected in the following diagram:



According to BellSouth's "new" and "revised" interconnection policy, because the Sprint 904-507 code is rated in the Callahan exchange, BellSouth's tandem switch should instead route the call to ALLTEL's end office switch in Callahan – even though no ALLTEL customer is involved

in the call. According to BellSouth, if Sprint wants to receive this BellSouth call, Sprint must interconnect directly with ALLTEL's switch in Callahan. The call routing that BellSouth is demanding is reflected in the following diagram:



BellSouth is proposing to add a new carrier to the call routing process (ALLTEL in the example) that as the previous diagram demonstrates, is not necessary for call completion.¹⁸

BellSouth is thus claiming the authority to determine how Sprint must interconnect with other carriers (here, ALLTEL). According to BellSouth, if Sprint wants to provide its services in ALLTEL's Callahan exchange, it must interconnect directly with ALLTEL in Callahan – at least if Sprint wants its customers to receive any calls. In short, BellSouth claims a right to control Sprint's entry into a non-BellSouth market.

**C. BELL SOUTH'S THREAT TO REROUTE TRAFFIC DESTINED TO SPRINT
BEGINNING JUNE 8, 2002**

BellSouth's position had been limited to newly acquired NXX codes (e.g., it refused to load Sprint codes that Sprint rated in rate centers established by non-BellSouth ILECs). BellSouth never intimated that it would change the routing of NXX codes that it had already loaded in its tandem switches. However, on March 8, 2002, BellSouth advised Sprint:

BellSouth will not support activation of NPA/NXX applications as described above and in our Carrier Notification. The current [Sprint PCS] configurations in Beaufort, SC, Mars Hill, NC, Stark FL and others should be corrected no later than June 8, 2002.¹⁹

BellSouth did not identify the "corrective action" it expects Sprint to take. It is nonetheless clear effective June 8, 2002, BellSouth intends to stop routing to Sprint over its Type 2A interconnection facilities calls that are rated in the identified non-BellSouth rate centers and will instead route the calls to the ILECs that have established the rate centers.

It is again important for the Commission to understand the consequences if BellSouth acts on its threat. Assume the example above: A BellSouth customer in Ponte Vedra Beach calls a Sprint customer having a number rated in ALLTEL's Callahan exchange. Today, BellSouth routes the call from its Ponte Vedra Beach switch to its LATA tandem switch, where the call is switched to the Sprint Type 2A interconnection facilities so the call can be delivered to Sprint's MSC for completion. See Diagram 1 above. According to BellSouth, effective June 8, 2002 BellSouth will instead route the call to ALLTEL's end office switch in Callahan. See Diagram 2 above.

¹⁸ BellSouth would effectively require ALLTEL's end office switch to function as a tandem switch.

¹⁹ Email from BellSouth to Sprint (March 8, 2002).

ALLTEL, of course, is not expecting to be involved in this call since the call is limited to customers of BellSouth and Sprint. ALLTEL and Sprint do not interconnect directly because they do not exchange a sufficient volume of traffic to cost-justify a dedicated facility connecting their respective switches. One option would be for Sprint to install a dedicated facility to ALLTEL's Callahan switch, despite the fact that ALLTEL and Sprint have determined that such a facility cannot be cost justified. If Sprint does not install this unnecessary facility, one of two things will happen on June 8, 2002:

1. The call will immediately drop because ALLTEL is not expecting to be involved in calls not involving its own customers; or
2. ALLTEL could route the call attempt back to the BellSouth's tandem (because its routing tables are written to send all calls to Sprint to the BellSouth LATA tandem). Presumably, BellSouth's tandem would then return the call attempt to ALLTEL (because its routing tables would be revised to deliver all calls rated in the Callahan exchange to ALLTEL's switch). Presumably, the call would continue to bounce between the BellSouth tandem and ALLTEL's end office switch until the caller abandons the call attempt.

Either way, calls to Sprint that are successfully completed today will not be completed after June 8, 2002, because of BellSouth's change in routing.

The example above involves a BellSouth customer calling a Sprint customer. However, the same result will occur with calls originating on other networks (*e.g.*, interstate calls destined to a Sprint customer having a telephone number rated in ALLTEL's Callahan exchange).

D. BELL SOUTH'S STATED EXPLANATIONS FOR ITS NEW POLICY

BellSouth has provided no reasonable justification for adopting its new policy. This new policy would have little or no impact on use of its tandem switch. Calls destined to Sprint in a given area would continue to be routed to BellSouth's tandem switch; BellSouth would only change the routing of calls once they reach its tandem switch (from the destination carrier to a new intermediary carrier). Its proposal increases the risk that customers – including its own

customers – will be unable to successfully complete their call attempts. What BellSouth's position does do is needlessly involve additional carriers in the call routing process and impose additional costs on other carriers (effectively forcing other carriers to interconnect directly with each other). The only rational explanation for BellSouth's position is that BellSouth hopes to obtain a cost advantage in the market – not by becoming more efficient, but by increasing the costs incurred by other carriers.

BellSouth initially refused to provide any explanation for its new policy other than to say that its past practice “violate[d] state commission regulations.”²⁰ BellSouth later told Sprint that its new policy is based on a state tariff it filed in 1995 (although BellSouth has still not explained how activity it deemed permissible between 1995 and 2000 suddenly became impermissible in 2001). In recent weeks, BellSouth has begun to advance a second argument in defense.

(a) BellSouth's State Tariff Defense. BellSouth has told Sprint that the historical practice of establishing a routing point in one area (served by BellSouth) but the rating point in another area (served by an ILEC other than BellSouth) violates the “virtual designated exchange” tariffs that BellSouth filed in 1995. BellSouth has, however, been more cautious in making this same point to the Commission:

BellSouth is also *concerned* that the CMRS providers' use of these “virtual NXX” designations *may be* inconsistent with limitations contained in BellSouth's tariffs.²¹

BellSouth's concern over compliance with state tariffs it prepared and filed is not credible given that BellSouth did not become “concerned” until 2001, six years after it filed its “virtual designated exchange” tariffs.

²⁰ See Exhibits B, C and E.

²¹ BellSouth Ex Parte Letter, Docket No. 02-35, at 2 (March 20, 2002)(emphasis added).

More importantly, Sprint does not use “virtual” NXX codes. The Commission has defined “virtual” codes as those that “correspond with a particular geographic area that are assigned to a customer located in a different geographic area.”²² Sprint obtains NXX codes only in areas where it has facilities and provides services to customers. There is nothing “virtual” about Sprint’s provision of services in areas where it obtains NXX codes.

BellSouth’s assertion that “state commission regulations” preclude it from honoring NXX codes with different rating and routing points is incorrect.²³ Not only are there no such “state commission regulations,” but Sprint is unaware of a single state commission adopting a policy disfavoring the long-standing industry practice. For example, Sprint’s ILEC, Sprint-Florida, once had state tariffs similar to BellSouth’s tariffs. Sprint-Florida proposed to remove the restrictions that BellSouth now relies upon, and the Florida Commission approved this tariff revision. This action confirms whatever tariff restrictions BellSouth is relying upon are not restrictions imposed by the Florida Commission.

In the end, it would appear that BellSouth’s state tariff defense is nothing more (and nothing less) than an argument that BellSouth does not want to comply with core federal interconnection requirements. A state tariff cannot be utilized to evade federal obligations.

(b) BellSouth’s Intercarrier Compensation Defense. About six weeks ago, BellSouth began advancing a second defense for its new interconnection policy. BellSouth stated in its March 20, 2002 Revised Carrier Notification:

²² *Developing a Unified Intercarrier Compensation Regime*, Docket No. 01-92, FCC 01-132, 16 FCC Rcd 9619, 9652 ¶ 115 (2001).

²³ BellSouth Interconnection Services, Revised Carrier Notification SN91082844 (March 20, 2002), *appended as Exhibit E*.

BellSouth does not agree with establishment of this arrangement, as to do so causes BellSouth and/or the third-party telecommunications carrier to improperly calculate inter-carrier compensation.²⁴

BellSouth further told the Commission, also on March 20, 2002, that it is “entitled to access charges” from CMRS carriers for handling intraMTA traffic originating on the networks of other ILECs.²⁵

BellSouth’s new argument, one unsupported by any law or precedent, suffers from two fatal flaws. First, at issue are intraMTA calls that originate on LEC networks and terminate on CMRS networks. Commission rules specify that such intraMTA calls are subject to reciprocal compensation, not access charges.²⁶ The Commission has specifically stated:

[T]raffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges.²⁷

The Commission reiterated only one year ago that “reciprocal compensation, rather than interstate or intrastate access charges, applies to LEC-CMRS traffic that originates and terminates within the same Major Trading Area (MTA).”²⁸

Second, intercarrier compensation is currently governed by the “calling-party’s-network-pays” (“CPNP”) principle. With CPNP, “the calling party’s carrier, whether a LEC, IXC or

²⁴ BellSouth Interconnection Services, Revised Carrier Notification SN91082844 (March 20, 2002), *appended as Exhibit E*. BellSouth’s concern over the ability of other ILECs to recover compensation is perplexing, since in proposing to send to other ILECs (*e.g.*, ALLTEL) calls not involving their customers, BellSouth never explains how other ILECs such as ALLTEL would recover their call handling costs from the originating carrier.

²⁵ BellSouth Ex Parte Letter, Docket 02-35, at 2 (March 20, 2002).

²⁶ See 47 U.S.C. §§ 51.701(b)(2), 51.703.

²⁷ *First Local Competition Order*, 11 FCC Rcd 15499, 16014 ¶ 1036 (1996).

²⁸ *Inter-carrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 at ¶ 47 (2001).

CMRS, . . . compensate[s] the called party's carrier for terminating the call."²⁹ Sprint recognizes that BellSouth should be compensated for transporting a call from the originating network to Sprint. However, under the CPNP regime in place today, BellSouth must seek compensation from the originating carrier, not the destination carrier. Moreover, a large portion of the traffic at issue is traffic originating on the BellSouth network and terminating directly to Sprint, with no intervening carrier. The fact that BellSouth's billing systems do not properly record this traffic is not a justification for imposing new interconnection costs and routing restrictions on other carriers.

In summary, the reasons BellSouth recites for its new interconnection policy are frivolous.

III. DISCUSSION

A. RBOCs DO NOT HAVE A RIGHT TO DETERMINE THE TYPE OF INTERCONNECTION UTILIZED BY OTHER CARRIERS

Congress has recognized that carriers may interconnect with each other either directly or indirectly.³⁰ In this regard, the Commission has explicitly ruled that CMRS carrier have no obligation to interconnect directly with other carriers.³¹ The Commission has further held that it is the interconnecting carriers, not the ILEC, that can choose the type of interconnection "based

²⁹ See *Unified Intercarrier Compensation NPRM*, 16 FCC Rcd 9610, 9614 ¶ 9 (2001). "CPNP regimes may be viewed as implicitly embracing the premise that the originating caller receives all the benefits of a call and should, therefore, bear the costs of both originating and termination." *Id.* at 9624 ¶ 37. The FCC is currently reconsidering this premise and examining whether the CPNP regime should be replaced with bill-and-keep. See *id.*

³⁰ See 47 U.S.C. § 251(a)(1) ("Each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.").

³¹ See *First Local Competition Order*, 11 FCC Rcd 15499, 15991 ¶ 997 (1996).

upon their most efficient technical and economic choices,”³² expressly ruling that “a LEC is obligated to provide a CMRS provider with the interconnection of its choice upon its request.”³³

[A CMRS] carrier is entitled to choose the most efficient form of interconnection for its network, and the BOCs may not dictate an RCCs’ [Radio Common Carriers’] type of interconnection.³⁴

In this regard, Commission rules explicitly state that a “local exchange carrier *must* provide the type of interconnection reasonably requested by a mobile carrier.”³⁵

If CMRS carriers can choose to interconnect indirectly with other carriers, it necessarily follows that an RBOC cannot force a CMRS carrier to interconnect directly with another carrier. Yet, as discussed above, this is precisely the right that BellSouth is claiming to possess. If BellSouth routes traffic destined to Sprint to another ILEC (*e.g.*, ALLTEL), the only way that Sprint customers with telephone numbers rated in the ILEC rate center will receive their calls is if Sprint interconnects directly with the ILEC.

B. BELL SOUTH’S NEW INTERCONNECTION POLICY CONTRAVENES THE COMMISSION’S NUMBERING RULES

Congress gave this Commission “exclusive jurisdiction” over the North American Numbering Plan (“NANP”), but further authorized the Commission to delegate “any or all of such jurisdiction.”³⁶ The Commission has delegated to NeuStar the authority to administer and implement the NANP.³⁷ The Commission has adopted rules governing the circumstances under

³² *Id.*

³³ *Bowles v. United Telephone*, 12 FCC Rcd 9840, 9849 ¶ 15 (1997).

³⁴ *Third Radio Common Carrier Order*, 4 FCC Rcd at 2369 2376 ¶ 47 (1989).

³⁵ 47 C.F.R. § 20.11(a)(emphasis added).

³⁶ 47 U.S.C. § 251(3)(1).

³⁷ *See Request of Lockheed Martin and Warburg, Pincus for Review of the Transfer of the Lockheed Martin Communications Industry Services Business*, 14 FCC Rcd 19792 (1999).

which carriers may obtain numbering resources,³⁸ and it directed NeuStar to comply with “published industry numbering resource administration guidelines and Commission order and regulations.”³⁹ Implicit within this structure is that all carriers will load in their networks numbering resources that NeuStar awards after determining that the applicant has met all Commission requirements. In this regard, courts have confirmed that the Commission’s exclusive jurisdiction over numbering administration includes the authority to implement a uniform numbering system.⁴⁰

BellSouth, with its new interconnection policy, has decided that the decisions made by NeuStar are no longer relevant because BellSouth unilaterally claims the authority to make judgments independent of NeuStar (*e.g.*, whether it will honor the numbering resources acquired by other carriers). BellSouth has further determined that it will make its independent decisions using factors not specified in the Commission’s numbering rules.

For example, NeuStar routinely awards NXX codes to CMRS carriers with different rating and routing points, as this arrangement is expressly permitted by industry standards.⁴¹ BellSouth has refused to load these codes in its network because it has made the independent judgment that this arrangement constitutes “inappropriate NXX rating.”⁴² The Commission should declare that BellSouth’s new interconnection policy is unlawful and inconsistent with the Commission’s numbering rules.

³⁸ 47 U.S.C. § 52.15(g).

³⁹ *See id.* at § 52.15(d).

⁴⁰ *See New York v. FCC*, 267 F.3d 91, 103-04 (2d Cir. 2001)(FCC authority extends to local dialing patterns).

⁴¹ *See note ... supra.*

⁴² BellSouth Ex Parte Letter, Docket No. 02-35, at 2 (March 20, 2001).

**C. BELLSOUTH'S PROPOSAL IS UNREASONABLY DISCRIMINATORY AND
CONTRAVENES SECTION 202(A) OF THE ACT**

BellSouth today routes all calls it receives at one of its tandem switches directly to the destination carrier – regardless of the rating point associated with the number being called. Under its proposal, BellSouth would no longer route calls directly to CMRS carriers if their customers happen to have a telephone number rated in an “independent” ILEC rate center; it would instead route calls to the independent ILEC, which would then assume responsibility to forward the call to the designated CMRS carrier. In contrast, BellSouth would continue to route calls to an “independent” ILEC directly to the ILEC, without use of any intermediary carrier.

Section 202(a) states that it “shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in . . . practices . . . [or] services.”⁴³ BellSouth’s proposal to route calls differently based on the identity of the destination carrier (*i.e.*, whether it is an ILEC or a non-ILEC) is unreasonably discriminatory and contravenes Sections 202(a) of the Act.

**D. RBOCs MAY NOT CHANGE THEIR TRANSIT SERVICES WITHOUT COMPLYING
WITH SECTION 214 OF THE ACT**

Section 214(a) of the Communications Act provides that “[n]o carrier shall discontinue, reduce, or impair service . . . unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby.”⁴⁴ BellSouth’s proposal – needlessly involving additional intermediary carriers for certain calls – would constitute a discontinuance, reduction or impairment of

⁴³ 47 U.S.C. § 202(a).

⁴⁴ 47 U.S.C. § 214(a). In other situations, BellSouth has acknowledged that it must obtain an FCC certificate before it may discontinue, reduce or impair its services. *See, e.g., Public Notice, Comments Invited on BellSouth Telecommunications Application to Discontinue Domestic Telecommunications Services*, NSD File No. W-P-D-553, DA 02-122 (Jan, 14, 2002).

service. Accordingly, BellSouth may not implement its proposal without first obtaining from the Commission a certificate that “neither the present nor future public convenience and necessity will be adversely affected thereby.”

E. STATE COMMISSIONS ARE PREEMPTED FROM ADDRESSING THIS ROUTING ISSUE

BellSouth’s initial position was that it had the right to unilaterally decide for itself how calls destined to other carriers should be routed.⁴⁵ BellSouth has since modified its position, stating more recently that it will “rais[e] the issue with the appropriate state commission for determination.”⁴⁶ Re-litigating the identical routing issue in nine different states is neither efficient nor cost effective. Re-litigating the identical routing issue in nine different states also risks the possibility that different state commissions will reach different results.

In fact, state commissions do not have regulatory authority to address the routing of traffic, at least to CMRS carriers. The Commission has preempted states over LEC-CMRS interconnection, holding that it possesses “plenary jurisdiction . . . over the physical plant used in the interconnection of cellular carriers”:

Cellular physical plant is inseparable and thus Section 2(b) does not limit our jurisdiction in this area. Like telephone terminal equipment, the interconnected trunk lines and equipment of a cellular system are used to make both interstate and intrastate calls. Moreover, it would not be feasible to require one set of trunk lines and equipment for intrastate calls and another for interstate calls.⁴⁷

⁴⁵ See BellSouth Interconnection Services, Carrier Notification SN91082844 (Jan. 30, 2002), *appended as Exhibit C*.

⁴⁶ BellSouth Interconnection Services, Revised Carrier Notification SN9108244 (March 20, 2002), *appended as Exhibit D*.

⁴⁷ *Second Radio Common Carrier Order*, 2 FCC Rcd 2910, 2912 ¶ 17 (1987). See also *Second CMRS Order*, 9 FCC Rcd 1411, 1498 ¶ 230 (1994).

The Commission further noted that “any state regulation in this area would substantially affect the development of interstate communications; without a nationwide policy governing the reasonable interconnection of cellular systems, many of those systems may be barred from the interstate public telephone network. A nationwide policy will also help prevent increased costs and diminished signal quality among cellular systems.”⁴⁸

Congress established this Commission for a core purpose: “to make available . . . a rapid, efficient, nation-wide, and world-wide wire and radio communication service.”⁴⁹ This charter can be achieved only if the Commission intervenes and reaffirms a national interconnection policy.

F. THE COMMISSION SHOULD BE CONCERNED ABOUT BELL SOUTH’S ARBITRARY EXERCISE OF ITS MONOPOLY POWER

The Commission should be concerned by BellSouth’s arbitrary exercise of monopoly power. BellSouth does not like the long-standing industry convention, authorized by industry standards, whereby CMRS carriers may designate different rating and routing points. Last year, BellSouth asked the Commission to change the current practice and to prohibit CMRS carriers from establishing different rating and routing points.⁵⁰ However, rather than wait for the Commission to enter its decision (if only to learn whether the Commission would agree with BellSouth and adopt the changes that BellSouth was advocating), BellSouth instead decided to take matters into its own hands – by refusing to load the NXX codes obtained by Sprint and other CMRS carriers.

⁴⁸ *Id.*

⁴⁹ 47 U.S.C. § 151.

⁵⁰ See BellSouth Reply Comments, Docket No. 01-92, at 15-17 (Nov. 5, 2001).

In March 2002, several CMRS carriers objected to BellSouth's new policy in connection with its Section 271 application involving Georgia and Louisiana. Two weeks later, BellSouth decided to "revise" its policy, stating that it would resume loading the NXX codes that CMRS carriers obtain pursuant to the Commission's numbering rules, but that it will "rais[e] the issue with the appropriate state commission."⁵¹ BellSouth would thus force carriers that are struggling to become profitable because of the intensity of competition to re-litigate the identical issue on a state-by-state basis. And, BellSouth would impose this costly state-by-state procedure on other carriers even though BellSouth readily acknowledges that "issues closely related to this one are currently *pending in another [FCC] docket, and that is where they should be resolved.*"⁵²

As Sprint noted above, the only rational explanation for BellSouth's changing position is that BellSouth hopes to obtain a cost advantage in the market – not by becoming more efficient, but by increasing the costs incurred by other carriers.

⁵¹ Exhibit E.

⁵² BellSouth Ex Parte Letter, Docket No. 02-35, at 4 (March 20, 2002)(emphasis added).

IV. CONCLUSION

For the foregoing reasons, Sprint respectfully requests that the Commission reaffirm that all telecommunications carriers have an obligation under the Communications Act to timely load in their networks numbering resources obtained by carriers and to use the rating and routing points that the carrier holding the numbering resources designates.

Respectfully submitted,

SPRINT CORPORATION
(on behalf of its Wireless Division)



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May 9, 2002

Exhibit A

**Letter from Bill Pruitt, Sprint,
to Randy Ham, BellSouth (June 8, 2001)**

SPRINT PCSSM

Bill Pruitt
Carrier Interconnection Management
Sprint PCS

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Mailstop KSOPAM0101
Overland Park, KS 66210-2035
Phone: (913) 315-2755
Fax: (913) 315-2531

E-mail Address: bpruit01@sprintspectrum.com

June 8, 2001

Mr. Randy Ham
Manager-Wireless Interconnection
BellSouth Interconnection, Room E3D1
2535 Colonnade Parkway, South
Birmingham, Alabama 35243

Dear Randy:

This letter is a formal request for BellSouth Telecommunications (BST) to process the routing request associated with the 904-408 NPA/NXX required for Sprint PCS's entry into the Macclenny, Florida service area. As you know, the 904-408 NPA/NXX is rate centered at the Northeast Florida Telephone Company Macclenny central office (MCLNFLXZDS1). Sprint PCS has asked that BST transit traffic to and from the Macclenny office through its Jacksonville 05T tandem. The original effective date for this order was March 03, 2001. However, BST has refused to perform the translations that would allow the correct routing. The reason given by BST is that the implementation of this arrangement would violate its Virtual Designated Exchange (VDE) Tariff and other rules and regulations.

With regard to BST's reference to the VDE tariff, it is clear that this tariff does not apply to the arrangement requested by Sprint PCS. The current and the proposed Interconnection Agreement between BST and Sprint PCS both state that the "Type 1, Type 2A and Type 2B interconnection arrangements described in BST's General Subscriber Services Tariff, Section A35, or in the case of North Carolina, in the North Carolina Connection and Traffic Interchange Agreement effective June 30, 1994, as amended, may also be purchased pursuant to this Agreement provided, however, *that such interconnection arrangements shall be provided at the rates terms and conditions set forth in this Agreement*". (Emphasis added) This language clearly states that Sprint PCS may purchase the interconnection arrangements described in §A35 but does not commit Sprint PCS to any "rates, terms or conditions" other than those found in the Agreement.

Mr. Randy Ham
June 8, 2001
Page 2

BST has also stated its belief that the current and the recently negotiated interconnection agreements do not require BST to route Sprint PCS NXXs through the BST tandem to the independent telephone company end offices that subtend the tandem. These Agreements, however, do in fact contain specific language regarding Wireless Intermediary Traffic:

"1. Definitions Wireless Intermediary Traffic. Wireless Intermediary traffic is defined as the delivery, pursuant to this agreement or Commission directive of local or toll (using traditional landline definitions) traffic to or *from a local exchange carrier other than BellSouth*; a CLEC; or another telecommunications company such as a CMRS provider other than Sprint PCS through the network of BellSouth or Sprint PCS from or to an end user of BellSouth or Sprint PCS.

6.11.1 ...BellSouth agrees to participate in Meet Point Billing for traffic which transits its network when both the originating and terminating parties participate in Meet Point Billing with BellSouth. Traffic from a network which does not participate in Meet Point Billing *will be delivered by Bell South*, however, call records for traffic originated and/or terminated by a non-Meet Point Billing network will not be delivered to the to the originating and/or terminating network....

6.11.2 ...Meet Point Billing, as defined in Section 6.11.1 above, under this Section will result in Sprint PCS compensating BellSouth at the intermediate rate of \$0.002 for traffic delivered to BellSouth's network, which terminates to a third party network" (Emphasis added).

There are no exceptions identified in the Agreement that would give BST the right to deny a request by Sprint PCS to route a Sprint PCS NPA/NXX to a given independent company utilizing the negotiated intermediary service. The fact that the NPA/NXX being routed has a rate center associated with an independent company is irrelevant from an Interconnection Agreement perspective. BST has already agreed to deliver these intermediary calls.

BST is asserting that Sprint PCS must have a direct connection to the switch of a telecommunications carriers subtending a BST tandem if one of the Sprint PCS NPA/NXXs uses a rate center associated with that subtending carrier's geographic service area. The NPA/NXXs at issue have not been issued to BST. They were ordered by, issued to, and are maintained by Sprint PCS. BST's tariffs, by definition, can only apply to BST's NPA/NXXs. BST has absolutely no authority under the Act, the FCC's implementing Orders and Rules or any other applicable regulations to mandate a direct connection between Sprint PCS and third party LECs. In fact, 47 C.F.R. §51.100(a)(3) specifically states that each telecommunications carrier has the duty "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." There is no basis to deny Sprint PCS the indirect interconnections that are expressly authorized under the law.

Mr. Randy Ham
June 8, 2001
Page 3

BST's refusal to do the translation work to route the Sprint PCS 904-408 NPA/NXX is delaying Sprint PCS's entry into this market which and is thereby putting Sprint PCS at a competitive disadvantage. This letter is a formal request for BST to complete the requested routing immediately so Sprint PCS may begin to offer service in the Macclenny service area.

Randy, I would like to resolve this issue as expeditiously and with as little conflict as we can. The Sprint PCS Telephone Number Administration group is quite frustrated with BST's Code Administrators and do not understand why BST is refusing our routing request as it is a standard type of request that BST (and other RBOCs and LECs) have performed in the past and continue to perform. I would appreciate your help in resolving this dispute and in receiving BST's formal response to this request by June 18, 2001.

Sincerely,

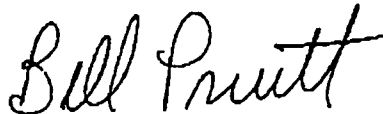


Exhibit B

**Letter from Randy Ham, BellSouth,
to Bill Pruitt, Sprint (July 11, 2001)**



July 11, 2001

Mr. Bill Pruitt
Carrier Interconnection Management
Sprint PCS
11880 College Blvd.
Overland Park, KS 66210-2035

Dear Bill:

In your letter of June 8, 2001 you formally requested that BellSouth Telecommunications, Inc. (BST) process your code memo request to activate NPA/NXX 904-408. This code memo request seeks to activate this NPA/NXX with a third party Incumbent Local Exchange Carrier (ILEC) rate center. The rate center requested, via this code memo, is Northeast Florida Telephone Company's Macclenny exchange service area. Additionally the specified code memo also asks BST to establish a routing center located in BST's Jacksonville exchange service area not the Northeast Florida Telephone Company, Macclenny exchange service area.

You also stated in your June 8, 2001 letter that "Sprint PCS has asked that BST transit traffic to and from the Macclenny office through its Jacksonville OST tandem". Clearly BST will honor any request that, when established, provides BST with the opportunity to transit traffic through its tandem when the originating party is one carrier and the terminating carrier is another. However when routing of traffic is such that calls from the Public Switched Telephone Network (PSTN), due to the routing requested for the NPA/NXX, never terminate to the third party network, in this case Northeast Florida Telephone Company, transit is not possible. Further, by your code memo establishing a rate center in the Northeast Florida Telephone Company and a routing center in BST, you cause normal local and toll options, associated with landline end user calls, to be rated and routed incorrectly. In this arrangement you also place BST in the position of having to rate calls based on tariffs for Northeast Florida Telephone Company which according to all known regulation is illegal.

We agree that the NPA/NXX belongs to Sprint PCS. We also agree that you have the right to define the rating and routing centers for that NPA/NXX. However we do not agree that you can do so in a fashion that causes either BST or Northeast Florida Telephone Company to violate regulations under which they operate. Review of the guidelines provided by NeuStar, managers of the national code administration system, shows that applications of rating and routing centers must meet all regulatory requirements.

BST will not support code memo applications where the rate center is in a company other than BST and the routing center is in BST. This is applied uniformly across the Commercial Mobile Radio Service (CMRS) and Competitive Local Exchange Carrier (CLEC) markets. Based on this position and the reasons stated above BST must decline to activate the code memo for NPA/NXX 904-408 as it is currently configured.

Sincerely

A handwritten signature in black ink, appearing to read "Randy J. Ham".

Randy J. Ham
Managing Director - Wireless Interconnection

Exhibit C

**BellSouth Interconnection Services,
Carrier Notification SN91082844 (January 30, 2002)**



BellSouth Interconnection Services

675 West Peachtree Street
Atlanta, Georgia 30375

**Carrier Notification
SN91082844**

Date: January 30, 2002

To: All Telecommunications Carriers Operating In BellSouth Telecommunications Inc.
Service Areas

Subject: All Telecommunications Carriers - Activation of NPA/NXX Codes with Rate Centers
in Non-BellSouth Service Areas

Increasingly, telecommunications carriers are requesting activation of NPA/NXX arrangements whereby routing of traffic is established within BellSouth service areas and rating of such traffic is established with a third-party telecommunications carrier's rate center service area. The third-party rate centers are for service areas outside of BellSouth's franchised service area in which BellSouth is licensed to provide service.

Routing of traffic to/from these NPA/NXXs, with a third-party rate center, is such that calls from/to the Public Switched Telephone Network (PSTN) should route to/from the third-party rate center network upon which the call is rated. Issues arise when the following occur:

- Routing of traffic to these NPA/NXXs, with a third-party rate center, is such that calls from the Public Switched Telephone Network (PSTN) never route to the third-party rate center network upon which the call is rated.
- Calls originating from these NPA/NXXs route over the BellSouth network for termination rather than routing over the third-party telecommunications carrier network, as they should.

Further, by this arrangement establishing a rate center in the third-party's service area and a routing center in BellSouth, normal local and toll options, associated with landline end-user calls, will be rated in a manner inconsistent with the routing of the call. This arrangement places BellSouth and the third-party telecommunications carrier in the position of having to rate calls, based on tariffs for the third party, as though the calls have actually originated from or terminated to the third-party telecommunications carrier, which is contrary to current regulations.

BellSouth does not agree with establishment of this arrangement, as to do so causes BellSouth and/or the third-party telecommunications carrier to violate state commission regulations under which they operate. Review of the guidelines provided by NeuStar, which manages the national code administration system function, shows that applications of rating and routing centers must meet all regulatory requirements.

BellSouth will not support activation of NPA/NXX applications where the rate center is in a company other than BellSouth and the routing center is in BellSouth. This position is applied uniformly across all telecommunications carrier markets.

Please contact your BellSouth account team representative with any questions.

Sincerely,

ORIGINAL SIGNED BY JIM BRINKLEY

Jim Brinkley – Senior Director
BellSouth Interconnection Services

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Exhibit D

**BellSouth Interconnection Services, Revised
Carrier Notification SN91082947 (March 20, 2002)**

BellSouth Interconnection Services

675 West Peachtree Street
Atlanta, Georgia 30375

**Carrier Notification
SN91082947**

Date: March 20, 2002

To: All Telecommunications Carriers Operating In BellSouth Telecommunications Inc.
Service Areas

Subject: All Telecommunications Carriers – REVISION TO SN91082844: Activation of
NPA/NXX Codes with Rate Centers in Non-BellSouth Service Areas.

This is to advise that Carrier Notification Letter SN91082844, originally posted on January 30, 2002, has been revised.

Please refer the revised letter for details.

Sincerely,

ORIGINAL SIGNED BY JIM BRINKLEY

Jim Brinkley – Senior Director
BellSouth Interconnection Services

Exhibit E

**BellSouth Interconnection Services, Revised
Carrier Notification SN91082844 (March 20, 2002)**



BellSouth Interconnection Services

675 West Peachtree Street
Atlanta, Georgia 30375

**Carrier Notification
SN91082844**

Date: March 20, 2002

To: All Telecommunications Carriers Operating In BellSouth Telecommunications Inc. Service Areas

Subject: All Telecommunications Carriers – REVISED: Activation of NPA/NXX Codes with Rate Centers in Non-BellSouth Service Areas (Originally posted on January 30, 2002)

Increasingly, telecommunications carriers are requesting activation of NPA/NXX arrangements whereby routing of traffic is established within BellSouth service areas and rating of such traffic is established with a third-party telecommunications carrier's rate center service area. The third-party rate centers are for service areas outside of BellSouth's franchised service area in which BellSouth is licensed to provide service.

Routing of traffic to/from these NPA/NXXs, which are established with a third-party rate center, is such that calls from/to the Public Switched Telephone Network (PSTN) should route to/from the third-party rate center network upon which the call is rated. Issues arise when the following occur:

- Routing of traffic to these NPA/NXXs, which are established with a third-party rate center, results in calls from the Public Switched Telephone Network (PSTN) that never route to the third-party rate center network upon which the call is rated.
- Calls originating from these NPA/NXXs route over the BellSouth network for termination rather than routing over the third-party telecommunications carrier network, as they should.

Further, by this arrangement of establishing a rate center in the third-party's service area and a routing center in BellSouth, normal local and toll options, associated with landline end-user calls, will be rated in a manner inconsistent with the actual routing of the call. This arrangement places BellSouth and the third-party telecommunications carrier in the position of having to rate calls, based on tariffs for the third party, as though the calls have actually originated from or terminated to the third-party telecommunications carrier, which is contrary to current regulations and causes compensation inaccuracies between the involved carriers.

BellSouth does not agree with establishment of this arrangement, as to do so causes BellSouth and/or the third-party telecommunications carrier to improperly calculate inter-carrier compensation and to violate state commission regulations under which they operate. Review of the guidelines provided by NeuStar, which manages the national code administration system function, shows that applications of rating and routing centers must meet all regulatory requirements.

If this arrangement is utilized, BellSouth will process the code memorandum request, while at the same time raising the issue with the appropriate state commission for determination.

Please contact your BellSouth account team representative with any questions.

Sincerely,

ORIGINAL SIGNED BY JIM BRINKLEY

Jim Brinkley – Senior Director
BellSouth Interconnection Services